

B O I E S, S C H I L L E R & F L E X N E R L L P

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May 11, 2010

VIA HAND DELIVERY AND ECF

Honorable Steven M. Gold
United States Magistrate Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Drug Mart Pharmacy Corp., et al. v. American Home Products, et al.
No. 93-CV-5148 (ILG) (SMG) (E.D.N.Y.)

Dear Judge Gold:

Pursuant to the Court's Order of March 25, 2010, we write on behalf of Plaintiffs to update the Court on the status of this matter and to provide a summary of the issues to be addressed at the upcoming Status Conference on May 18, 2010. As set forth in greater detail below, we have made some progress with the Manufacturer Defendants and now have selected the 30 Plaintiffs, but we are at a standstill with CVS/Caremark in regard to the lost customer matching process. This, in turn, has delayed the matching process with the other favored purchasers, and now that the 30 Plaintiffs are selected, it creates a bottleneck for the entire case to move forward.

Selection of 30 Plaintiffs

As instructed by the Court, after the March 24, 2010 status conference the parties held two meet and confer sessions to discuss various proposals for the selection of 30 Plaintiffs to proceed to trial. The parties were unable to reach agreement on any proposal other than random selection. We then agreed upon a protocol to conduct the random selection and on May 10, 2010, the parties met and performed the random selection. A list of the 30 randomly selected Plaintiffs is attached hereto as Attachment A.

CVS/Caremark

The unresolved issues between Plaintiffs and CVS/Caremark are set forth in their respective letters filed with the Court on April 27 and May 3, 2010. As set forth therein, there is simply no reason for CVS/Caremark to delay this task any longer and we request that the Court enter an Order at our upcoming conference: (i) requiring CVS/Caremark to provide a search protocol tailored to provide all of the requested information for the 30 Plaintiffs; (ii) requiring CVS/Caremark to participate in a meet and confer regarding any unresolved questions or issues

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with the inclusion of IT professionals; and (iii) setting a date for the completion of CVS/Caremark's obligations to respond to the potential lost customer discovery.

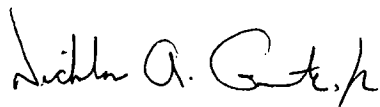
Defendants Production of Contracts

The Manufacturer Defendants have yet to certify their completion of production of contracts with certain previously identified favored purchasers. At the request of the Manufacturer Defendants, Plaintiffs provided a detailed list of subsidiaries and affiliates of the relevant favored purchasers so that the Manufacturer Defendants could further focus their production efforts. The Manufacturer Defendants raised issues regarding the scope and timing of production of contracts for the identified entities and a meet and confer took place yesterday. Discussions are ongoing regarding these issues and we are hopeful that we will resolve these issues without assistance from the Court.

Next Steps

At the March 24 conference, the Court concluded that Plaintiffs' request for the entry of a Scheduling Order for the completion of pre-trial work was premature due to the lack of an agreement regarding which Plaintiffs would move forward. Now that the parties have selected the 30 Plaintiffs to proceed to trial, the time is right to set a schedule for the completion of remaining discovery so that these cases may be deemed trial ready. Due to the complexities of these cases and the numerous parties, it may be appropriate for the Court to require the parties to hold promptly a Rule 26(f) conference for the purpose of seeking to reach an agreement regarding the scope and timing of all remaining discovery and if the parties are unable to reach agreement, the Court should hold a conference in June to resolve any remaining issues and set a pre-trial schedule.

Respectfully yours,



Nicholas A. Gravante, Jr.

Enclosure

cc: Counsel for Defendants (via ECF)

Attachment A

Drug Mart Pharmacy Corporation et al. v. American Home Products
1:93-cv-05148-ILG-SMG

NO.	RANDOM NO. SELECTED	LEGAL NAME OF PHARMACEUTICAL ENTITY	NCPDP	TRADENAME	CITY	STATE	ZIP
1	102	ACKAL'S IBERIA PHARMACY, INC.	1908322	ACKAL'S PHARMACY	NEW IBERIA	LA	70562-2311
2	724	BERNIE'S PHARMACY, INC.	0201323	BERNIE'S PHARMACY	ANCHORAGE	AK	99508
3	479	DISCOUNT DRUGS OF ELLIJAY, GA, INC.	1131488	VALU-RITE DISCOUNT PHARMACY, FORMERLY D/B/A WAL-MART	DALTON	GA	30720
4	361	NORTH PARK PHARMACY, LTD.	1915896	ACADIANA EAST PHARMACY	RAYNE	LA	70578
5	378	RICKMAN & HAILE, INC.	4401004	PERKINS DRUGS	GALLATIN	TN	37066
6	712	MARJORIE H. LAMAR	0713467	MADISON DRUG COMPANY	MADISON	VA	22727
7	98	PELTA DRUG, INC.	2115841	JAMES PHARMACY	BALTIMORE	MD	21230
8	374	MILLER DRUGS, INC.	1903043	MILLER DRUGS	OPELOUSAS	LA	70570
9	401	CREECH DRUG CO., INC	3410874	CREECH DRUG CO., INC	SELMA	NC	27576
10	196	LIVELY DRUG CO., INC.	3320001	LIVELY DRUG CO., INC.	LIVELY	VA	22507
11	36	TRIANGLE PHARMACY, INC.	3656379	TRIANGLE PHARMACY, INC.	RAVENNA	OH	44266
12	58	GRAVES DRUG STORE EMPORIA, INC.	1702251	GRAVES DRUG STORE	EMPORIA	KS	66801

NO.	RANDOM NO. SELECTED	LEGAL NAME OF PHARMACEUTICAL ENTITY	NCPDP	TRADENAME	CITY	STATE	ZIP
13	521	MATTHEW E. LEON	3704005	WEST END PHARMACY	ALLENTOWN	PA	18104
14	303	KLEIN'S PHARMACY & ORTHOPEDIC APPLIANCES	3605675	KLEIN'S PHARMACY	CUYAHOGA FALLS	OH	44223
15	465	J. T. LINDSEY	1116549	OMEGA PHARMACY	OMEGA	GA	31775
16	260	CASH & HENDERSON DRUGS, INC.	4203129	CASH & HENDERSON DRUGS	CHESNEE	SC	29323
17	406	RANDOLPH F SPAINHOUR	3426663	MAPLE HILL PHARMACY	BURGAW	NC	28425
18	526	WASCHKO'S PHARMACY, INC.	3918200	WASCHKO'S PHARMACY, INC.	HAZELTON	PA	18201
19	193	DAVID W. GARBER	4810227	FISHBURNE PHARMACY	WAYNESBORO	VA	22980
20	382	COLLINWOOD DRUGS	4425890	COLLINWOOD DRUGS	COLLINWOOD	TN	38450
21	33	MONROE PHARMACY, INC.	3608392	MONROE PHARMACY	TOLEDO	OH	43606
22	227	DEE-CAR INC.	1019620	MEDICAL III PHARMACY	PLANTATION	FL	33317
23	670	PHARMA-CARD, INC.	1525053	PHARMA-CARD PRESCRIPTION SERVICES	VALPARAISO	IN	46383
24	387	THRIFTY DRUG STORE, INC	2700208	THRIFTY DRUG	ANACONDA	MT	59711
25	426	HARRAH PHARMACY, INC.	0316769	HARRAH PHARMACY	HARRAH	OK	73045
26	626	R.H. MOORE DRUG COMPANY OF FRANKLIN, INC.	1804726	R.H. MOORE DRUG COMPANY OF FRANKLIN, INC.	FRANKLIN	KY	42135-0387
27	792	THE TROUTMAN DRUG CO.	3121528	THE TROUTMAN DRUG CO.	NILES	OH	44446
28	411	FAMILY PRESCRIPTION CENTER, INC.	3907485	FAMILY PRESCRIPTION CENTER, INC.	BETHLEHEM	PA	18013
29	146	FELDMAN, INC.	0705674	DRUG CENTER OF NEWTOWN	NEWTOWN	CT	6470

NO.	RANDOM NO. SELECTED	LEGAL NAME OF PHARMACEUTICAL ENTITY	NCPDP	TRADE NAME	CITY	STATE	ZIP
30	341	MAPLE AVENUE PHARMACY, INC.	1046083	MAPLE AVENUE PHARMACY	EUNICE	LA	70535